IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6645 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAMBAJI ATMARAM KESARKAR - Petitioner(s)
Versus
NEW INDIA INDUSTRIES LTD - Respondent(s)

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Appearance :
MR DILIP B RANA for Petitioner No(s).: 1.
M/S TRIVEDI & GUPTA for Respondent No(s).: 1.

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CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date : 11/08/2005

ORAL JUDGMENT

1. By this petition, the petitioner challenges order passed by

Labour Court, Vadodara, in Reference (LCV) No. 524 of 1989, rejecting the Reference against retrenchment of the petitioner by the respondent.

2. The petitioner was an employee of the respondent, working as a Knitter. Due to reduction in work, excess employees were sought to be retrenched by the respondent. This exercise was undertaken by the respondent after negotiations and settlement with the Union. The petitioner was working with the respondent as a Knitter since March 1973 and was enjoying the status of a permanent employee. The company stopped giving him work since 1st October, 1982 and, therefore, he raised an industrial dispute, which was, ultimately, referred to Labour Court, Vadodara, for adjudication, where the same came to be registered as Reference (LCV) No.47 of 1983. In the Reference, the respondent company took a stand that the petitioner was not at all retrenched and, therefore, the petitioner resumed the work. However, the petitioner was retrenched with effect from 12th May, 1984. In respect of this retrenchment, the petitioner raised an industrial dispute and a Reference came to be made in the year 1989, i.e. after about five years. The Labour Court took into consideration rival side contentions and came to a conclusion that there is no substance in the case of the petitioner and, therefore, rejected the Reference. While doing so, the Labour Court took

into consideration the evidence in the form of admission by the petitioner himself that the petitioner was working as a Knitter in the Knitting Department and, after his retrenchment, he was called when work arose in the Spinning Department, but he refused to work as such. He also admitted that, in the year 1985, there was temporary rise in the workload and, therefore, the petitioner was called to work as a Knitter, but as a Badli workman, which also he refused to do. The Labour Court has also taken into consideration the fact that it is not the case of the petitioner that the respondent has employed new workman after his retrenchment and, ultimately, rejected the Reference.

3. Learned Advocate, Mr. Rana, appearing for the petitioner submitted that the case of the petitioner before the Labour Court was not that after his retrenchment other persons are employed, but the case was that his juniors have not been retrenched and the petitioner is retrenched. He has shown to this Court the written arguments tendered before the Labour Court and has also provided a copy of the affidavit of the petitioner for perusal.

3.1 Learned Advocate, Mr. Rana, submitted that the petitioner did not join work in 1985, as he was offered to work as a Badli workman

and his insistence was for being taken up as a permanent employee. He submitted that the Labour Court has not given due consideration to the allegation in the affidavit about non-retrenchment of juniors and, therefore, this petition may be entertained.

4. The petition is opposed to by learned Advocate, Mr. Anoop Krishnan, representing M/s Trivedi Gupta for the respondent. He submitted that the Labour Court has taken into consideration all relevant aspects. It is an admitted position that the petitioner was offered work, but he did not accept that offer. He also submitted that the retrenchment is effected after settlement with the Union. In fact, the Knitting Department is already closed. The petitioner, therefore, could not have insisted for his employment. According to him, retrenchment compensation was offered to the petitioner, which he refused to accept. The petitioner has raised the dispute after the lapse of about five years. Under the circumstances, he submitted that the petition may be dismissed.

5. Before proceeding to consider the merits of the petition, at the outset, it would be appropriate to record that, although this petition is nomenclatured as a petition under Article 226 of the Constitution,

virtually, this petition is under Article 227 of the Constitution, which position is not disputed by the parties. The resultant effect would be that the scope of the petition would be limited to the question whether any jurisdictional error is indicated to have been committed by the Labour Court and/or whether there is any perversity in the judgment impugned.

5.1 It is again to be recorded that the order cannot be considered as perverse for the reason that nothing is indicated to show that the order is passed in neglect of material on record or on consideration of material which is not on record. Likewise, jurisdictional error is also not indicated. Thus, apart from merits, on this technical ground also, the petition cannot be entertained.

6. In order to satisfy itself, this Court has examined even the merits of the matter based on contentions raised by parties.

6.1 It is on record that despite retrenchment in May 1984, the industrial dispute was raised and the matter was referred to the Labour Court the year 1989, after about five years. During this period, it appears that, at least on two occasions, the petitioner was offered work by the respondent, which he refused and the ostensible reason indicated

therefor is that he wanted to assert his right of a permanent employee. However, he has not taken any legal action till 1989. The delayed action on the part of the petitioner would defeat his cause.

6.2 It also appears that the petitioner was offered retrenchment compensation, which he refused to accept.

6.3 The case of the petitioner, as vehemently canvassed by learned Advocate, Mr. Rana, is that employees junior to the petitioner were not retrenched appears to be devoid of merits. The affidavit of the petitioner and the cross-examination thereunder before the Labour Court clearly indicates that the persons, namely, Vinod Bhagvansinh, Harish Ramanlal and Sunil Ramanlal, who are alleged to be juniors to him, were Badli workers and were working as Knotter and not Knitters. The nature of work is altogether different and, as such, it cannot be said that the juniors to the petitioner were not retrenched and the petitioner was retrenched. The petitioner was offered work on two occasions, but on both the occasions, he has refused to work, although the remuneration was the same. Keeping all these aspects, the Labour Court has dismissed the Reference and rightly so, in the opinion of this Court. If this be the factual scenario, there is no merit in the petition and the petition must

fail even on merits. The petition stands dismissed. Rule is discharged with no order as to costs.

7. Before parting, it would be appropriate to observe that even as per the respondent, retrenchment compensation was offered and sent to the petitioner, but he refused to accept. In light of this situation, it would be open for the petitioner to ask for the payment of amount of retrenchment compensation.

[A. L. DAVE, J.]

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